

OBSCENE AND INDECENT BROADCASTS

It's Against the Law

It is a violation of federal law to broadcast **obscene** programming at any time. It is also a violation of federal law to broadcast **indecent** programming during certain hours. Congress has given the Federal Communications Commission (FCC) the responsibility for administratively enforcing the law that governs these types of broadcasts. The Commission may revoke a station license, impose a monetary forfeiture, or issue a warning, for the broadcast of obscene or indecent material.

Obscene Broadcasts Are Prohibited at All Times

Obscene speech is not protected by the First Amendment and cannot be broadcast at any time. To be obscene, material must meet a three-prong test:

- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.

Indecent Broadcast Restrictions

The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity. As such, the courts have held that indecent material is protected by the First Amendment and cannot be banned entirely. It may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience.

Consistent with a federal statute and federal court decisions interpreting the indecency statute, the Commission adopted a rule pursuant to which broadcasts -- both on television and radio -- that fit within the indecency definition and that are aired between 6:00 a.m. and 10:00 p.m. are subject to indecency enforcement action.

Enforcement Procedures and Filing Complaints

Enforcement actions in this area are based on documented complaints received from the public about indecent or obscene broadcasting. The FCC's staff reviews each complaint to determine whether it has sufficient information to suggest that there has been a violation of the obscenity or indecency laws. If it appears that a violation may have occurred, the staff will start an investigation by sending a letter of inquiry to the broadcast station.



If a complaint does not contain information sufficient to determine that a violation may have occurred, the complaint will be dismissed. In such a case, the complainant has the option of re-filing the complaint with additional information, filing a petition for reconsideration of the staff action, or filing an application for review (appeal) to the full Commission.

If the facts and information contained in the complaint suggest that a violation did not occur, then the complaint will be denied. In that situation, the complainant has the option of filing a petition for reconsideration of the staff action or an appeal to the full Commission.

Context

In making indecency determinations, context is key! The FCC staff must analyze what was actually said during the broadcast, the meaning of what was said, and the context in which it was stated. Accordingly, the FCC asks complainants to provide the following information:

- Information regarding the details of what was actually said (or depicted) during the allegedly indecent or obscene broadcast. There is flexibility on how a complainant may provide this information. A complainant may submit a significant excerpt of the program describing what was actually said (or depicted) or a full or partial tape or transcript of the material.

In whatever form the complainant decides to provide the information, it must be sufficiently detailed so the FCC can determine the words and language actually used during the broadcast and the context of those words or language. Subject matter alone is not a determining factor of whether material is obscene or indecent. For example, stating only that the broadcast station “discussed sex” or had a “disgusting discussion of sex” during a program is not sufficient. The use of specific, isolated words does not itself determine whether material is indecent. For example, listing only isolated words spoken by a radio announcer without more detail is not enough information for the FCC’s staff to initiate an investigation. Also, general descriptions without a detailed explanation of what was actually stated (or depicted) are generally not sufficient.

- The date and time of the broadcast. Under federal law, if the FCC assesses a monetary forfeiture against a broadcast station for violation of a rule, it must specify the date the violation occurred. Accordingly, it is important that complainants provide the date the material in question was broadcast. A broadcaster’s right to air indecent speech is protected between the hours of 10 p.m. and 6 a.m. Consequently, the FCC must know the time of day that the material was broadcast.
- The call sign of the station involved. The FCC’s obscenity/indecency enforcement program is directed at individual broadcast station licensees and not individual radio announcers, the music industry, or specific music performers. Accordingly, the FCC’s staff must know the call sign of the station that aired the material. It is not enough, for example, to name the radio announcer who made the on-air statement.



Of necessity, any documentation you provide to the FCC about your complaint becomes part of the FCC's records and may not be returned.

Complaints containing this information should be directed to:

Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th St., SW, Room 3-B443
Washington, DC 20554

For a list of the Commission's recent enforcement actions in this area, please visit the FCC's Enforcement Bureau Web site at www.fcc.gov/eb/broadcast/obscind.html.

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To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on www.fcc.gov/cgb/emailservice.html.

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